shall also contain a discussion of the evidence pertinent to any application made by the respondent under §242.17 and the reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to §242.16(b) and the respondent does not make an application under §242.17, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision on Form I–38, if deportation is ordered, or on Form I–39, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he may deem necessary.

[26 FR 12112, Dec. 19, 1961, as amended at 59 FR 62302, Dec. 5, 1994]

§242.19 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the trial attorney, together with the notice referred to in §3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the special inquiry officer in the presence of the respondent and the trail attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form EOIR–26, and advised of the provisions of §242.21. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the trial attorney.

(c) *Summary decision.* When the special inquiry officer renders a summary decision as provided in §242.18(b), he shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form EOIR–26, and advised of the provisions of §242.21.

[26 FR 12212, Dec. 19, 1961, as amended at 27 FR 9647, Sept. 29, 1962; 61 FR 18909, Apr. 29, 1996]

§242.20 Finality of order.

The decision of the Immigration Judge shall become final in accordance with §3.39 of this chapter.

[52 FR 2941, Jan. 29, 1987, as amended at 59 FR 26595, May 23, 1994]

§242.21 Appeals.

(a) Pursuant to part 3 of this chapter, an appeal shall lie from a decision of an Immigration Judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Notice of Appeal (Form EOIR–26), fees, and briefs are set forth in §§3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal (Form EOIR–26) in accordance with the provisions of §3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to §3.1(d)(1–a) of this chapter.

(b) *Prohibited appeals; legalization or applications.* An alien respondent defined in §245a.2(c) (6) or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability

based solely on refusal by the immigration judge to entertain such an application in deportation proceedings.

[29 FR 7236, June 3, 1964, as amended at 52 FR 16194, May 1, 1987; 53 FR 10064, Mar. 29, 1988; 54 FR 29439, July 12, 1989; 61 FR 18909, Apr. 29, 1996]

§242.22 Reopening or reconsideration.

Motions to reopen or reconsider are subject to the requirements and limitations set forth in §3.23 of this chapter. The immigration judge may upon his/her own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he/she had made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under part 3 of this chapter. An order by the immigration judge granting a motion to reopen may be made on Form I–328. A motion to reopen will not be granted unless the immigration judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing; nor will any motion to reopen for the purpose of providing the respondent with an opportunity to make an application under §242.17 be granted if respondent's rights to make such application were fully explained to him/her by the immigration judge and he/she was afforded an opportunity to do so at the hearing, unless circumstances have arisen thereafter on the basis of which the request is being made. The filing of a motion under this section with an immigration judge shall not serve to stay the execution of an outstanding decision; execution shall proceed unless the immigration judge who has jurisdiction over the motion specifically grants a stay of deportation. The immigration judge may stay deportation pending his/her determination of the motion and also pending the taking and disposition of an appeal from such determination. The filing of a motion to reopen pursuant to the provisions of §3.23(b)(4)(iii) of this chapter shall stay the deportation of the alien pending the disposition of the motion and the adjudication of any properly filed administrative appeal.

[52 FR 26470, July 15, 1987, as amended at 61 FR 18909, Apr. 29, 1996; 61 FR 21065, May 9, 1996]

§242.23 Proceedings under section 242(f) of the Act.

(a) *Order to show cause.* In the case of an alien within the provisions of section 242(f) of the Act, the order to show cause shall charge him with deportability under section 242(f) of the Act. The prior order of deportation and evidence of the execution thereof, properly identified, shall constitute prima facie cause for deportability under this section.

(b) *Applicable procedure.* Except as otherwise provided in this section, proceedings under section 242(f) of the Act shall be conducted in general accordance with the rules prescribed in this part.

(c) *Deportability.* In determining the deportability of an alien alleged to be within the purview of paragraph (a) of this section, the issues shall be limited solely to a determination of the identity of the respondent, i.e., whether the respondent is in fact an alien who was previously deported, or who departed while an order of deportation was outstanding; whether the respondent was previously deported as a member of any of the classes described in paragraph (2), (3) or (4) of section 241(a) of the Act; and whether respondent has unlawfully reentered the United States.

(d) *Order.* If deportability as charged in the order to show cause is established, the Immigration Judge shall order that the respondent be deported under the previous order of deportation in accordance with section 242(f) of the Act.

(e) *Trial attorney; additional charges.* When a trial attorney is assigned to a proceeding under this section and additional charges are lodged against the respondent, the provisions of paragraphs (c) and (d) of this section shall cease to apply.

[26 FR 12282, Dec. 28, 1961, as amended at 27 FR 9647, Sept. 29, 1962; 30 FR 2021, Feb. 13, 1965; 56 FR 38333, Aug. 13, 1991]